Supreme Court, U.S.
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No. 95-640

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JACK F. GRIMM and JOANNE LAMPE CHARLTON,
Personal Representative of the Estate of
Harry G. John, *et al.*,
Petitioners,

v.

COLUMBUS-AMERICA DISCOVERY GROUP, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should review the district court's correct factual finding, upheld on appeal, that respondent did not use any information from petitioners in locating and recovering the shipwreck that is at issue in this case?

2. Whether this Court should reconsider fact-specific discovery rulings made by the district court and affirmed on appeal?

LIST OF PARTIES

The only party not identified in the list provided in the petition is the Insurance Company of North America, which was a claimant below. Pursuant to Supreme Court Rule 29.1, the Court is advised that respondent has no parent companies or subsidiaries that are not wholly owned.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	3
I. THE FACTUAL FINDING THAT PETITIONERS' INFORMATION WAS NOT USED TO LOCATE THE SHIPWRECK IS UNWORTHY OF REVIEW	4
II. FACT-SPECIFIC DISCOVERY RULINGS DO NOT MERIT RECONSIDERATION HERE	5
CONCLUSION	6

TABLE OF AUTHORITIES

Cases — Page

South American S.S. Co. v. Atlantic Towing Co., 22 F.2d 16 (5th Cir. 1927) 4

THE BLACKWALL, 77 U.S. (10 Wall.) 1 (1870) 4

Miscellaneous

R. Stern & E. Gressman, *et al.*, *Supreme Court Practice* (7th ed. 1993) 4, 5

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Columbus-America Discovery Group ("Columbus-America"), respectfully submits this brief in opposition to the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case. The petition raises no issues that merit plenary review.

STATEMENT OF THE CASE

This is the second round of appellate proceedings in this case, which arises from Columbus-America's discovery of the 1857 shipwreck of the S.S. CENTRAL AMERICA. The facts will be briefly stated here only insofar as they bear on the issues raised by petitioners.

Harry G. John and Jack F. Grimm intervened in this salvage action on the eve of the first trial, alleging that Columbus-America had found the shipwreck

by using some of the information they claimed to have gathered during their own unsuccessful efforts to locate it, and that Columbus-America's alleged use of that information was improper. They therefore claimed that they were entitled to a salvage award. In the 1990 trial, the district court found no evidence whatever that any data allegedly generated by petitioners was used to locate the shipwreck or that petitioners contributed in any way to Columbus-America's success. Pet. App. 370a.[1] The court awarded the shipwreck to Columbus-America, based on its factual finding that the sunken vessel and its cargo had been abandoned. *Id.* 395a-396a.

On appeal, the Fourth Circuit reversed in a split decision, holding that no abandonment had occurred. Pet. App. 274a. In remanding the case, the court also determined that the petitioners should be accorded an opportunity for additional discovery in the course of the further proceedings. *Id.* 284a-285a.

On remand, the district court conducted a second trial and granted Columbus-America a ninety percent salvage award. Pet. App. 202a. The petitioners were allowed to take further discovery on their claims, which were ultimately rejected in their entirety. Based on the evidence and testimony presented, the court found as a fact that Columbus-America had never used the data that petitioners vigorously claimed it had used. *Id.* 167a. ("From the totality of the evidence in this case, it would be pure speculation or conjecture to say that the [information in question] in any way contributed to [Columbus-America's] location of the Central America, or that it made any use of such data in its search for the Central America."). The court further concluded that, in any event, petitioners had no legal basis for their claim that Columbus-America had supposedly misappropriated their

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[1] References to "Pet. App." refer to the Appendix filed by certain insurance underwriters with their earlier petition in Case No. 95-415, which petitioners here apparently seek to incorporate by reference.

data. *Id.* 145a-148a. In short, the district court dismissed petitioners' baseless claims on several grounds.

Petitioners again appealed, and this time the Fourth Circuit affirmed, unanimously rejecting all of their claims. Indeed, the court of appeals adopted both of the district court's alternate grounds, upholding the factual finding that Columbus-America did not use the information in question and concluding that petitioners had no legal basis to assert a misappropriation claim, even if any such claim had been factually supported. Pet. App. 35a-39a.[2] The Fourth Circuit also concluded that the district court did not abuse its discretion in rejecting petitioners' claims that they should be entitled to yet more discovery in an attempt to prove their unpersuasive claims. *Id.* 39a-40a n.16.[3] Petitioners filed for rehearing and made a suggestion for rehearing *en banc*, which the Fourth Circuit denied without comment. *Id.* 402a.

REASONS FOR DENYING THE WRIT

Petitioners present two issues, neither of which is cert-worthy, for reasons that can and will be stated in short order. In essence, petitioners raise merely factual, case-specific issues that are not of general importance and that do not present any conflict among the circuits or with any of the Court's decisions. For these reasons, the Court should deny the petition.

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[2] The court of appeals recognized that petitioners' factual claims were grounded on the "rather fantastic theory" that their data definitively revealed the location of the shipwreck even "though [they] themselves had not acted on this 'definitive' information, and had, in fact, felt so little stirred by it that they gave all their rights in it to a midwestern monastery." Pet. App. 37a-38a & 40a n.16.

[3] The court of appeals remanded the case for further proceedings on ownership claims made by certain underwriters, which are entirely unrelated to the claims raised by these petitioners here. Pet. App. 71a-72a.

I. THE FACTUAL FINDING THAT PETITIONERS' INFORMATION WAS NOT USED TO LOCATE THE SHIPWRECK IS UNWORTHY OF REVIEW.

Petitioners begin by urging the Court to resolve the discrete legal issue of whether a party seeking a salvage award in an admiralty proceeding must have a proprietary interest in information that it provides *when* that information assists in the discovery or preservation of any property that is recovered. Pet. 15-17. In particular, they allege that the decision below conflicts on this issue with one older federal decision—*South American S.S. Co. v. Atlantic Towing Co.*, 22 F.2d 16 (5th Cir. 1927).

The short answer to petitioners' contention is that the issue is not properly presented here. Regardless of how the Court might resolve this issue, the decision below would still stand on the alternative ground that Columbus-America made no use of the data in question to locate this shipwreck. The trial court reviewed the evidence and testimony and made this finding as a matter of fact, *see* Pet. App. 167a, which was upheld by the court below as not clearly erroneous, *see id.* 39a ("[T]he intervenors offered a theory of the case that hinged on what could charitably be called circumstantial evidence.").

Indeed, a contrary factual finding is a prerequisite to any valid legal claim in this regard, as petitioners recognize, citing controlling precedent. *See* Pet. 17 (salvage award is proper for all parties "who engaged in the enterprise and *materially contributed* to the saving of the property") (citing THE BLACKWALL, 77 U.S. (10 Wall.) 1, 11-12 (1870)) (emphasis added). Given the alternative factual ground for the district court's decision, which was affirmed by the court of appeals, certiorari review cannot be appropriate. *See* R. Stern & E. Gressman, *et al., Supreme Court Practice* 189 (7th ed. 1993).

A longer answer, which will be touched on only briefly, is that the case cited by petitioners (where one party provided information in cooperation with another and

that information *was* used by a steamship that was in peril) is completely inapposite here. In this case, the courts below mentioned whether the petitioners had a proprietary interest in the disputed information because petitioners had alleged that Columbus America had either misappropriated it or acted improperly in obtaining it. The petitioners, moreover, had provided the disputed data to third parties. It thus was appropriate for the courts below to mention the "proprietary interest" issue in addressing whether the petitioners had any actual grounds for raising such claims. In the end, petitioners' claims were rejected by both the district court and the Fourth Circuit. *See* Pet. App. 168a-39a. Thus, this case does not present any issue that implicates the *Atlantic Towing* case.

Accordingly, even if the putative "conflict" drummed up by the petitioners warranted review, which it plainly does not, it simply is not properly presented in the factual and legal posture of this case.

II. FACT-SPECIFIC DISCOVERY RULINGS DO NOT MERIT RECONSIDERATION HERE.

The second issue raised by petitioners, which is a claim that the trial court erred in denying some of their discovery requests, also does not merit review here. Issues of this sort rarely warrant the Court's review, because they typically involve fact-specific and case-specific disputes that the trial courts have broad discretion to resolve. *See* R. Stern & E. Gressman, *et al., Supreme Court Practice* at 189-191. Without belaboring these points here, it is sufficient to note: (1) petitioners simply reargue the facts, often in the most speculative manner; (2) they were given ample discovery and every opportunity to prove their "rather fantastic" claims, which they were unable to do; (3) they do not allege any conflict among the courts or with any decisions of this Court; and (4) they do not describe any issue of general importance on or beyond the facts of this case.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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